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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/631,272	07/31/2003	Marc Charles Payne	881022-7	3765
23879	7590	01/13/2006		
BRIAN M BERLINER, ESQ O'MELVENY & MYERS, LLP 400 SOUTH HOPE STREET LOS ANGELES, CA 90071-2899			EXAMINER STERLING, AMY JO	
			ART UNIT 3632	PAPER NUMBER

DATE MAILED: 01/13/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No. 10/631,272	Applicant(s) PAYNE ET AL.	
	Examiner Amy J. Sterling	Art Unit 3632	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 07 November 2005.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-9 and 14-23 is/are pending in the application.
- 4a) Of the above claim(s) 2,3 and 5-8 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1,4,9 and 14-23 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 31 July 2003 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

This is the **Final Office Action** for application number 10/631,272 Method and System for Temporary Attachment of a Container to a Vehicle, filed on 7/31/02. Claims 1-9 and 14-23 are pending. Claims 2, 3 and 5-8 are withdrawn. This **Final Office Action** is in response to applicant's reply dated 11/7/05. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Applicant's amendment necessitated any new ground(s) of rejection presented in this Office action.

Affidavit/Declaration

The affidavit/declaration filed under 37 CFR 1.132 filed 3/1/05 has is acknowledged and has been considered, but is insufficient to overcome the rejection of claims (See Response to Arguments Below for explanation).

Claim Rejections - 35 USC § 103

Claims 1, 9, 14, 15 and 17-20 are rejected under 35 U.S.C. 103(a) as being unpatentable over United States Patent No. 3524614 to Sorth and in view of United States Patent No. 5491621 to Duty.

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Sorth discloses an attachment device having a bottle holder (1) having a sleeve with a receptacle adapted to enclose a portion of a squeeze bottle if so desired, a magnet (4) that is assembled to the base of the sleeve of the holder (via 5).

Sorth fails to specifically teach a cushion to be assembled to the bottle holder wherein at least a portion of the cushion is inherently adapted to be positioned between the magnet and an exterior surface.

Duty divulges an attachment device (figures 1-4) including a magnet (38) with a circular cap rubber cushion/boot (42) wherein it is specifically stated that the rubber cushion/boot is for preventing the magnet from scratching or marring the panel of a car (column 3, lines 18-21). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made from the teachings of Duty to have modified the magnet of Sorth so as to have a rubber cushion/boot connected thereto as in Duty '621 which would inherently be positioned between the magnet and the exterior surface of a vehicle so as to prevent the magnet from scratching or marring the panel of a vehicle.

Claims 4 and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over United States Patent No. 3524614 to Sorth and in view of United States Patent No. 5491621 to Duty, as applied to claims 1, 14 and 15 above and further in view of U.S. Patent number 4,844,400 to Jasmagy, Jr.

Sorth in view of Duty disclose the previously described invention wherein the holder is a cup with a sleeve connected to a circular bottom, wherein the sleeve has top

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and bottom ends, but fail to specifically teach the sleeve to be a conical sleeve with a top end having a greater diameter than a bottom end.

Jasmagy, Jr. divulges an attachment device (figures 1-3) including a conical sleeve (12) having a top end with a diameter greater than that of a bottom end, used in order to more easily insert the desired article into the holder. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made, from the teachings of Jasmagy, Jr. to have modified the sleeve of Sorth in view of Duty to be a conical sleeve with a top end with a diameter greater than that of a bottom end so as to allow for a greater number of various sized containers to be held in the holder of the attachment device.

Claim 21 is rejected under 35 U.S.C. 103(a) as being unpatentable over United States Patent No. United States Patent No. 3524614 to Sorth and in view of United States Patent No. 5491621 to Duty as applied to claim 14 above and further in view of United States Patent No. 5722574 to Pratt.

Sorth and Duty show the basic inventive concept as shown above with the exception that they do not specifically show a cylindrical squeeze bottle disposed in the sleeve.

Pratt teaches a sleeve (8) in which a cylindrical squeeze bottle (10) is disposed, used in order to easily and portably dispense a desired liquid. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made, from

the teachings of Pratt to have inserted a squeeze bottle into a sleeve in order to easily and portably dispense a desired liquid.

Claims 22 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over United States Patent No. 3524614 to Sorth and in view of United States Patent No. 5491621 to Duty and in view of United States Patent No. 5722574 to Pratt as applied to claim 21 above and further in view of United States Patent No. 6220311 to Litto.

Sorth, Duty and Pratt show the basic inventive concept as shown above with the exception that they do not specifically show that the squeeze bottle contains a wax/vehicle finishing material.

Litto teaches that it is well known that squeeze bottles may contain a vehicle finishing material such as a wax, in order to portably carry the desired liquid. (See Col. 48, lines 7-10). Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made, from the teachings of Litto, to have filled the bottle with a vehicle finishing material such as a wax in order to portably carry the desired liquid.

Response to Arguments

The applicant has argued that because the Sorth reference did not enjoy commercial success, that "one of ordinary skill would not have considered using a magnetic cup holder around the time of the invention" (See Remarks 9/17/05, page 7, lines 5-6). This argument fail to comply with 37 CFR 1.111(b) because it amounts to a general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the references.

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, putting a softer pad on a harder edged magnet to protect the attachment surface from scratches, was knowledge which was generally available at the time of the alleged invention and therefore a motivation for combination.

The Affidavit/Declaration under 37 CFR 1.132 filed 3/1/05 is insufficient to overcome the rejection of claims based upon Sorth and Wemyss as set forth in the last Office action because: The rejection is now moot.

The applicant has argued that the affidavit/declaration is still pertinent because the alleged invention of the present application has enjoyed commercial success and being the object of a long-felt need. While these secondary considerations have been acknowledged, the attaching of a rubber boot over a device in order to prevent the scratching of an attachment surface was well within the knowledge of a person of ordinary skill in the art at the time of the invention. Therefore, statement under 37 CFR 1.132 is not sufficient to allow for patentability of the current claims.


Conclusion

THIS ACTION IS MADE FINAL. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action. Any inquiry concerning this communication should be directed to Amy J. Sterling at telephone number 571-272-6823. The examiner can normally be reached (M-F 8 a.m.-5:00 p.m.). If attempts to reach the examiner are unsuccessful, the examiner's supervisor, Robert Olszewski can

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be reached at 571-272-6788. The fax machine number for the Technology center is 7571-273-8300 (formal amendments) or 571-273-6823 (informal amendments and communications). Any inquiry of a general nature or relating to the status of this application should be directed to the Technology Center receptionist at 571-272-3600.


Amy J. Sterling
12/29/05